

REMARKS

While the applicant waits for a response to the amendment of May 10, 2005, at least three reasons to traverse the Advisory Action of May 13, 2005, are apparent from its basis that the apparatus of the cited Kato, et al. patent "is capable of casting a product having substantially all of the alloy flowing in a semi-solid state."

First, this is unsupported speculation as to the qualities of the apparatus. No Action has identified any support for it.

Unsupported speculation as to the qualities of that apparatus can form no basis for rejecting claim In re Glass, 176 USPQ 529, 532 (CCPA 1973).

Second, it is contrary to the teaching of the Kato, et al. patent already cited from column 6, lines 48-50, of injecting "completely molten metal" and not the semi-solid metal (or magnesium) claimed.

PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM THE CLAIMS MPEP 2141.02 (emphasis original).

The teaching away is a distinction in this case where, as noted above, the reference does not disclose the claimed semi-solid injection as known art it teaches a completely-molten improvement away from.

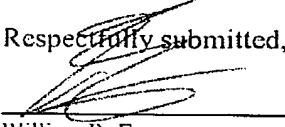
Third, because the Kato, et al. patent neither discloses nor suggests the semi-solid injection of which it is asserted capable, such assertion of capability must be a fact within the personal knowledge of an employee of the Office.

When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons. 37 CFR 1.104(d)(2).

No such affidavit has yet been provided as the applicant now calls for.

Reconsideration and allowance are, therefore, requested.

If an extension fee is required, please charge deposit account 12-0425.


Respectfully submitted,

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